

ROBERT T. BROTT

IBLA 82-30

Decided April 20, 1982

Appeal from decision of Colorado State Office, Bureau of Land Management, rejecting petition for reinstatement of Mining Claims Occupancy Act application. C-2824-MCOA.

Affirmed.

1. Applications and Entries: Reinstatement--Mining Occupancy Act: Generally

Where an applicant under the Mining Claims Occupancy Act of Oct. 23, 1962, as amended, 30 U.S.C. §§ 701-709 (1976), fails to respond to a request from BLM to submit within a prescribed period of time specific information necessary to determine whether the applicant is qualified, the case is properly closed by BLM, and a petition filed by the applicant 10 years later seeking to reinstate his application is properly denied, there being no provision for reinstatement of such an application and the statutory deadline for filing an application having passed.

APPEARANCES: Robert T. Brott, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Robert T. Brott has appealed from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated August 27, 1981, rejecting his petition for reinstatement of an application filed pursuant to section 1 of the Mining Claims Occupancy Act (MCOA) of October 23, 1962, as amended, 30 U.S.C. § 701 (1976).

Section 1 of the Act of October 23, 1962, provides, in part, for the conveyance of an interest in the area within an unpatented mining claim to any occupant thereof, who is deemed to be a "qualified applicant" and who "applies therefor within the period ending June 30, 1971." An applicant is deemed to be "qualified" if he is "a residential occupant-owner, as of October 23, 1962, of valuable improvements in an unpatented mining claim which constitute for him a principal place of residence and

which he and his predecessors in interest were in possession of for not less than seven years prior to July 23, 1962." 30 U.S.C. § 702 (1976).

On October 23, 1967, appellant filed an MCOA application for fee simple title to land described by metes and bounds within the Red Cloud Lode mining claim, situated in Gilpin County, Colorado, within the Pine Mining District. Appellant stated that the mining claim had been located in 1894 by Thor Johnson, appellant's great-grandfather, and had been "continuously occupied as a family home" since that time. He stated further, "Thor Johnson's daughter inherited the title and passed it to Theodore Thomas Brott, who passed it to his son Robert Theodore Brott, who presently resides there." Appellant also stated that improvements consisted of "a one and a half story building, pavilion and roadway" and that the building, constructed in 1894, was "maintained as a permanent residence" by him. It was appellant's belief that the mineral interests in the land were valueless.

By letter dated November 13, 1967, BLM required appellant to furnish additional evidence as to the location of the mining claim. Counsel for appellant responded to BLM's request by letter dated February 29, 1968, stating that the mining claim "lies principally in the north half of Section 21, Township 2 South, Range 73 North."

By letter dated March 21, 1968, noting that the mining claim was situated within the Arapaho National Forest, BLM requested the Regional Forester, Forest Service, U.S. Department of Agriculture, to make a mineral examination of the claim. ^{1/} The letter also stated that "[i]t appears [appellant] * * * can be considered a qualified applicant."

The Assistant Regional Forester responded to BLM's request by letter dated August 2, 1968, stating that, in view of statements made by Margaret Brott Maher, appellant's aunt, appellant was not believed to be a qualified applicant because "Mrs. Maher was in physical possession of the cabin July 31, 1968 and there is little doubt that she has been in undisputed possession of the cabin and premises for many years." The Assistant Regional Forester enclosed an affidavit from Maher, dated August 1, 1967, in which she stated that she was the granddaughter of Thor Johnson and that ownership of the mining claim had passed to her mother, Esther Johnson Brott, and then to her by a bill of sale executed July 23, 1954. Maher stated that on January 14, 1966, she gave a quit-claim deed to the mining claim to appellant because he had "no legal residence in Gilpin County and was desirous of obtaining a job in that County." Sometime later, Maher realized that the quitclaim deed was in conflict with an occupancy permit from the Forest Service, dated November 17, 1960. In her affidavit, she stated that she wished "to rescind" the quitclaim deed and to be reestablished as the legal owner "on the records of Gilpin County, Colorado * * * inasmuch as I am now considered the legal owner * * * by the Forest Service in this District."

^{1/} By letter dated Feb. 24, 1970, the Assistant Regional Forester reported that the mining claim was considered "invalid."

By letter-decision dated August 14, 1970, BLM requested that appellant clarify the question of ownership of the mining claim stating:

Inasmuch as Margaret Brott Maher appears to have been the occupant-owner of the Red Cloud lode mining claim and improvements for the required seven years prior to and beyond July 23, 1962 and held title to the improvements on the crucial date of October 23, 1962, she rather than yourself, may qualify as an applicant.

In view of the uncertainty of ownership of the cabin and other improvements, as well as the mining claim, you are allowed a period of thirty days from receipt of this letter within which to submit acceptable evidence of your title to the improvements and mining claim; otherwise your application will be closed without further notice.

Appellant did not respond, and the case was closed on August 3, 1971.

On August 20, 1981, appellant petitioned for reinstatement of his October 23, 1967, application, contending that the evidence requested by BLM in its August 14, 1970, letter-decision "had already been provided in the petitioner's letter of 2-28-68 and was duly recorded in the records of Gilpin County." 2/

In its August 27, 1981, decision, BLM rejected appellant's petition, stating: "Since C-2824 was officially closed on our records and since the Mining Claims Occupancy Act expired on or about June 30, 1971, we find that we are without legal authority to re-open the subject case."

In his statement of reasons for appeal, appellant reiterates the contention in his petition and, in addition, makes a number of other arguments which are not relevant to disposition of this appeal.

[1] Conveyance under section 1 of the Act of October 23, 1962, supra, may only be made to a qualified applicant. Funderberg v. Udall, 396 F.2d 638 (9th Cir. 1968). In order to qualify, an applicant must be "a residential occupant-owner, as of October 23, 1962," and he and his predecessors in interest must be "in possession of [the claim] for not less than seven years prior to July 23, 1962." 30 U.S.C. § 702 (1976). In order to determine appellant's qualifications, BLM was entitled to require him to furnish further information concerning such qualifications. See Judith Gail Bell, 57 IBLA 139 (1981), and cases cited therein. This was the nature of BLM's August 14, 1970, request. There is no evidence that appellant responded. Appellant maintains that the February 29, 1968, letter from his attorney should be construed as responsive to BLM's request. The February 29 letter was, however, in response to a prior request, dated November 13, 1967, regarding the

2/ The "letter of 2-28-68" is apparently a reference to the letter dated Feb. 29, 1968, from appellant's counsel to BLM.

location of the mining claim and did not provide the information which was later sought by BLM. 3/

BLM's request for information specified the time period within which appellant was required to respond and informed him of the consequences of failing to respond. The case file contains evidence that appellant received the notice on August 21, 1970. When appellant did not respond within the prescribed time period, nor file an appeal, BLM properly closed the case file. See Judith Gail Bell, supra.

Now 10 years later, appellant seeks to breathe life into the application. This he cannot do. There is no provision in the applicable statute or Departmental regulations for the reinstatement of an application filed under the MCOA. 4/ Furthermore, appellant was precluded from filing a new application after the file was closed, because the date for filing an application had passed, i.e., June 30, 1971. 30 U.S.C. § 701 (1976); John Paul Hinds, 18 IBLA 385 (1975). Therefore, reinstatement was not appropriate, and a new application was precluded. Accordingly, BLM properly rejected appellant's petition for reinstatement. 5/

3/ The Feb. 29, 1968, letter, however, also included the following language:

"You also indicate some question as to the occupancy from July 23, 1955, to October 23, 1962. I find, upon reviewing the application, that the precise question is not answered. However, you will note in Paragraph 3 that the claimant indicates continuous occupancy since 1894 as a family home; this, of course, includes the time from July 23, 1955, to October 23, 1962, in fact, to the present." (Emphasis added.) Nevertheless, this language does not respond to BLM's later questions regarding whether appellant himself had owned and occupied the mining claim "as of October 23, 1962" or, indeed, had ever been in possession of the claim "prior to July 23, 1962." 30 U.S.C. § 702 (1976).

4/ Departmental regulations do provide for reinstatement, but only in the context of a "canceled entry." 43 CFR 1826.1. Departmental cases concerning reinstatement have involved entries under the public land laws. E.g., Kuper v. Fry, 27 L.D. 547 (1898); Thomas Blunt, 15 L.D. 569 (1892). Appellant's application for relief under the Act of Oct. 23, 1962, supra, cannot be construed as an "entry," i.e., an "inceptive right" to unappropriated public land, which amounts to an appropriation of that land. See Chotard v. Pope, 25 U.S. 586, 588 (12 Wheat.) (1827); Loyd Wilson, 48 L.D. 380, 381 (1921).

5/ While we need not rule on the question of appellant's qualifications, there is substantial doubt whether appellant was a "qualified applicant." Appellant has amply demonstrated that he was a successor in interest to a mining claim, owned and occupied by his family since 1894. Documents submitted on appeal indicated that he was in possession of the claim "prior to July 23, 1962." 30 U.S.C. § 702 (1976). However, there is a crucial deficiency in his proof. Appellant did not establish that he owned the mining claim "as of October 23, 1962." 30 U.S.C. § 702 (1976); see Dwight H. Huston, 21 IBLA 24 (1975). Indeed, he admits to acquiring ownership in January 1966. Therefore, he would not qualify as a residential-occupant owner. See Jessie A. Brown (On Reconsideration), 28 IBLA 339 (1977).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Edward W. Stuebing
Administrative Judge

